

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Criminal No. 3:20-cr-120
)	
vs.)	DEFENDANT’S MOTION FOR
)	RELEASE
WHITEHORSE DUCHARME,)	
)	
Defendant.)	

Comes now Whitehorse Ducharme, Defendant above-named, by and through his attorney, Assistant Federal Public Defender Christopher J. Lancaster, moves this Honorable Court for its Order considering the terms of Defendant’s release based upon the following:

1. Defendant is charged in a three-count Indictment with Aggravated Sexual Abuse of a Minor, in violation of 18 U.S.C. §§ 2241(c) and 1152.

2. A detention hearing was held in the Northern District of Alabama on July 24, 2020, and Defendant was ordered detained. An Order of Detention was filed on July 27, 2020.

3. An arraignment was held before Magistrate Judge Alice Senechal on September 1, 2020. The Court ordered that the Order of Detention filed in the Northern District of Alabama would remain in place.

4. 18 U.S.C. § 3142(f) provides that a detention hearing “may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.” Defendant asserts that there is information that the Court should consider which

was not discussed at the time of Defendant's original July 24, 2020, detention hearing in the Northern District of Alabama.

5. Since the time Defendant was brought to the District of North Dakota, he has remained at the Cass County Jail in Fargo, North Dakota. Defendant suffers from breathing/sleep disorder that affects not only his ability to sleep, but places a strain on his body. Without the aid of a bipap device, Defendant's breathing becomes very difficult and there is concern that his breathing could stop. In addition, Defendant's breathing problems place considerable strain on his heart.

6. In the process of being brought into the District, Defendant's bipap device was broken and could not be fixed. Medical staff at the Cass County Jail made attempts to obtain replacement parts for Defendant's bipap machine. When they were unable to obtain the parts, arrangements to obtain a new bipap machine were made with the United States Marshals Service, however, that process took time to obtain authorization. Once a machine was obtained, the specific settings prescribed for Defendant had been lost and attempts were made to obtain those settings from his prescriber in Alabama without success. At that point, an appointment with the Sanford Sleep Center in Fargo was made in order for Defendant to undergo an examination and to obtain settings for the bipap machine.

7. From the time of Defendant's arrest in Alabama on this matter to the time he completed his appointment at the Sanford Sleep Center and was then able to utilize the new bipap machine, Defendant without the aid of such equipment and went through a tremendous ordeal. Defendant went through continued sleep disruption. He had to rely on fellow inmates and jail staff at the Cass County Jail to monitor him while he slept, because Defendant was concerned that his breathing would stop. Throughout the time Defendant was without the bipap

device, Defendant and his family were in continual contact with the office of the undersigned out of fear for the well being of Defendant.

8. Though Defendant was finally provided with the new functioning device, he still has difficulty with its use and ability to sleep at the Cass County Jail. In addition to his breathing/sleep issues, Defendant suffers from PTSD, hypertension, diabetes, high cholesterol, and arthritis. As a result, Defendant must take a number of different medications to address those physical issues.

9. Defendant also has great concern when it comes to the well being of his wife. Prior to Defendant's arrest, his wife, Candace Ducharme, was taken against her will by an ex-boyfriend and another individual, beaten, and abused. The ordeal left Ms. Ducharme scarred emotionally and physically. In addition, Ms. Ducharme suffers from liver failure and dementia associated with Wernicke-Korsakoff Syndrome. Defendant was caring for his wife prior to his arrest. After his arrest, she was moved to a care facility in Albuquerque, New Mexico.

10. Defendant moves the Court for an order allowing him to be released on condition that he reside in a residential reentry center (RRC), in addition to other reasonable conditions of the Court. Further, Defendant requests that his name be placed on the RRC waitlist corresponding to his original appearance in the District on September 1, 2020. The request for advanced placement on the RRC waitlist is made based on the ordeal Defendant experienced without the aid of a bipap machine to assist his breathing and sleep, the continued discomfort he experiences in its use at the Cass County Jail, and the difficulty, cost, and emotional toll Defendant experiences in being unable to remain in sufficient contact with his wife.

11. According to the Pretrial Services Report of July 24, 2020, the Court was made aware of Defendant's need for a "breathing device," but little additional information was

provided. In addition, the report noted that Defendant's wife was in a hospital being treated for a "recent illness," however, the Court was provided with no further detail.

WHEREFORE, Defendant Whitehorse Ducharme, requests the Court release him on conditions required by the Court, including that he be placed at a residential reentry center (RRC).

Dated this 26th day of January, 2021.

Respectfully submitted,

JASON J. TUPMAN
Federal Public Defender
By:

/s/ Christopher J. Lancaster
Christopher J. Lancaster
Assistant Federal Public Defender
Attorney for Defendant
Office of the Federal Public Defender
Districts of South Dakota and North Dakota
Federal Square, Second Floor
112 Roberts Street North, Suite 200
Fargo, ND 58102
Telephone: 701-239-5111
Facsimile: 701-239-5098
filinguser_SDND@fd.org